

Amendments to Rules of Criminal Procedure Affecting Circuit Court Procedures

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Rule Amendments Applicable to Circuit Court — Juror Questionnaire

Rule 2.510 Juror Personal History Questionnaire

- Conforms to 2004 PA 12 (MCL 600.1332) by striking reference to “presiding judge.

Rule Amendments Applicable to Circuit Court — Impaneling the Jury

Rule 2.511 Impaneling the Jury

- Person convicted of a felony is not qualified to be a juror under Subrule (D)(1).
(MCL 600.1307a)
- Permits the exercise of multiple peremptory challenges.

Rule Amendments Applicable to Circuit Court — Speedy Trial

Rule 6.004 Speedy Trial

(A) Right to Speedy Trial

- Addition by the court; simply makes clear that the remedy for a constitutional violation is dismissal

(C) Delay in Felony and Misdemeanor Cases

- Adds to the ROR release provision (the “180-day” bond rule that ROR may be overcome by clear and convincing evidence showing that some other form of release is required to insure the safety of the public or the appearance of the defendant, as contained in MCL 765.6.

(D) Untried Charges Against State Prisoner.

- Substitutes the language of the statute. This will lead to different results in some situations

Rule Amendments Applicable to Circuit Court — Assistance of Lawyer

Rule 6.005 Right to Assistance of Lawyer; Advice;
Appointment for Indigents; Waiver; Joint
Representation; Grand Jury Proceedings

(E) Advice at Subsequent Proceedings.

The court may refuse to adjourn a proceeding to appoint counsel or allow a defendant to retain counsel if an adjournment would significantly prejudice the prosecution, and the defendant has not been reasonably diligent in seeking counsel.

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Rule Amendments Applicable to Circuit Court — Right to Assistance of Lawyer

Rule 6.005 Right to Assistance of Lawyer;
Appointment for Indigents; Waiver; Joint
Representation; Grand Jury Proceedings

(H) Scope of Trial Lawyer's Responsibilities

- An appointed lawyer's appointment would expire after initial sentencing; allows flexibility to the judge for HYTA, resentencings, and the like.

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Rule Amendments Applicable to Circuit Court – Video & Audio Proceedings

Rule 6.006 Video and Audio Proceedings

(A) Defendant at a Separate Location. District and circuit courts may use two-way interactive video technology to conduct the following proceedings between a courtroom and a prison, jail, or other location: initial arraignment on the warrant, arraignments on the information, pretrials, pleas, sentencing for misdemeanor offenses, show cause hearings, waivers and adjournments of extradition, referrals for forensic determination of competency, and waivers and adjournments of preliminary examinations.

Rule Amendments Applicable to Circuit Court - Video & Audio Proceedings (continued)

Rule 6.006 Video and Audio Proceedings

(B) Defendant in the Courtroom – Preliminary Examinations. As long as the defendant is either present in the courtroom or has waived the right to be present, on motion of either party, district courts may use telephonic, voice, or video conferencing, including two-way interactive video technology, to take testimony from an expert witness or, upon a showing of good cause, any person at another location in a preliminary examination.

Rule Amendments Applicable to Circuit Court - Video & Audio Proceedings (continued)

Rule 6.006 Video and Audio Proceedings

- (C) Defendant in the Courtroom – Other Proceedings. As long as the defendant is either present in the courtroom or has waived the right to be present, upon a showing of good cause, district and circuit courts may use two-way interactive video technology to take testimony from a person at another location in the following proceedings:

Rule Amendments Applicable to District Court - Video and Audio Proceedings (continued)

Rule 6.006 Video and Audio Proceedings

- (C) (continued)
- (1) evidentiary hearings, competency hearings, sentencings, probation revocation proceedings, and proceedings to revoke a sentence that does not entail an adjudication of guilt, such as youthful trainee status;
- (2) with the consent of the parties, trials. A party who does not consent to the use of two-way interactive video technology to take testimony from a person at trial shall not be required to articulate any reason for not consenting.

Rule Amendments Applicable to District Court - Video and Audio Proceedings (continued)

Rule 6.006 Video and Audio Proceedings

- (D) Mechanics of Use.
- The use of telephonic, voice, video conferencing, or two-way interactive video technology, must be in accordance with any requirements and guidelines established by the State Court Administrative Office, and all proceedings at which such technology is used must be recorded verbatim by the court.

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Rule Amendments Applicable to District Court - Summary of Video & Audio Proceedings Changes

Rule 6.006 Video and Audio Proceedings

- New Rule replacing AO 2000-3.
- Allows for the use of two-way interactive video technology to conduct certain proceedings without a showing of good cause, even if the defendant is not in the courtroom.
- Allows for the use of telephonic, voice, or video conferencing, including two-way interactive video technology, to take testimony from an expert witness without a showing of good cause, or from any other witness with a showing of good cause, at a preliminary examination, if defendant is in the courtroom or has waived the right to be present. (MCL 766.11a)

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Rule Amendments Applicable to District Court - Summary of Video & Audio Proceedings Changes

Rule 6.006 Video and Audio Proceedings

- Allows for the use of two-way interactive video technology to take testimony of a witness at certain proceedings with a showing of good cause, if defendant is in the courtroom or has waived the right to be present.
- Allows for the use of two-way interactive video technology to take testimony of a witness at a trial with a showing of good cause and with the consent of the parties, if defendant is in the courtroom or has waived the right to be present.
- Must be done in accordance with any SCAO requirements and guidelines and proceedings must be recorded verbatim by the court.

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Rule Amendments Applicable to Circuit Court — Pretrial Release

Rule 6.106 Pretrial Release

(D) Conditional Release

- Allows a court to require that a person comply with a condition of release limiting or prohibiting contact with any other named person.
- Provides that if such a condition conflicts with another court order, the most restrictive provision of each order takes precedence over the other order.

(E) Money Bail

- Modified to comply with MCL 766.7.

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Rule Amendments Applicable to Circuit Court — Pretrial Release (continued)

Rule 6.106 Pretrial Release

(G) Custody Hearing

- Modified to allow prosecutor to request a custody hearing.

(I) Termination of Release Order

- Modified to comply with MCL 766.7.

Rule Amendments Applicable to Circuit Court — Circuit Court Arraignment in District Court

Rule 6.111 Circuit Court Arraignment in District Court

(A) “If the defendant, the defense attorney, and the prosecutor consent on the record, the circuit court arraignment may be conducted and a plea of not guilty, guilty, nolo contendere, guilty but mentally ill, or not guilty by reason of insanity may be taken by a district judge in criminal cases cognizable in the circuit court immediately after the bindover of the defendant. Following a plea, the case shall be transferred to the circuit court where the circuit judge shall preside over further proceedings, including sentencing.”

Rule Amendments Applicable to Circuit Court - Circuit Court Arraignment in District Court (continued)

Rule 6.111 Circuit Court Arraignment in District Court

- (B) Arraignments conducted pursuant to this rule shall be conducted in conformity with MCR 6.113.
- (C) Pleas taken pursuant to this rule shall be taken in conformity with MCR 6.301, 6.302, 6.303, and 6.304, as applicable, and, once taken, shall be governed by MCR 6.310.
- (D) Each court intending to utilize this rule shall submit a local administrative order to the State Court Administrator pursuant to MCR 8.112(B) to implement the rule.

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Rule Amendments Applicable to District Court — Information or Indictment

Rule 6.112 The Information or Indictment

- (B) Use of Information or Indictment. A prosecution must be based on an information or an indictment. Unless the defendant is a fugitive from justice, the prosecutor may not file an information until the defendant has had or waives a preliminary examination. An indictment ~~may be is~~ returned and filed ~~before a defendant's without a~~ preliminary examination. When this occurs, the indictment ~~may substitute for the complaint and~~ shall commence judicial proceedings.
- (F) Notice of Intent to Seek Enhanced Sentence. A notice of intent to seek an enhanced sentence pursuant to MCL 769.13 must list the prior convictions that may be relied upon for purposes of sentence enhancement. The notice must be filed within 21 days after the ~~defendant is arraigned or has waived arraignment on the information charging the underlying felony, or before trial begins, if the defendant is tried within the 21-day period~~ defendant's arraignment on the information charging the underlying offense or, if arraignment is waived, within 21 days after the filing of the information charging the underlying offense.

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Rule Amendments Applicable to District Court — Arraignment on Indictment or Information

Rule 6.113 Arraignment on Indictment or Information

- (D) Preliminary Examination Transcript. ~~Unless the defendant pleads guilty at the arraignment or the parties otherwise agree, the court must order the~~ The court reporter to shall transcribe and file the record of the preliminary examination if such is demanded or ordered pursuant to MCL 766.15. The order must also provide for the payment of the reporter's fees.
- (E) Elimination of Arraignments. A circuit court may submit to the State Court Administrator pursuant to MCR 8.112(B) a local administrative order that eliminates arraignment for a defendant represented by an attorney, provided other arrangements are made to give the defendant a copy of the information.

Rule Amendments Applicable to Circuit Court — Joinder & Severance

Rule 6.120 Joinder and Severance; Single Defendant

- The rule is simply “tweaked.” In light of *People v Nutt*, the prosecutor may charge offenses in the same transaction in separate informations.
- The amended rule allows the judge to join or sever related offenses on his/her own motion, so long as the parties are given an opportunity to be heard (this would include primarily offenses in the same transaction).

Rule Amendments Applicable to Circuit Court - Discovery

Rule 6.201 Discovery

(A) Mandatory Disclosure

- (1) allows an interview possibility as alternative to name and address of witness; also allows amendment of witness list without leave of court up to 28 days before trial.
- (3) is to end the practice of calling an expert without providing a report—must provide a substitute for the report if no report that would include the opinion and underlying basis, as well as the expert's qualifications.

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Rule Amendments Applicable to Circuit Court — Discovery (continued)

Rule 6.201 Discovery

(A) Mandatory Disclosure (continued)

- (5) is new, and requires each party to disclose criminal convictions known to the party of any witness the party may call.
- (6) combines former (5) with current (6), and also provides that copies of documents photographs and so on are provided only on request, with costs of productions a matter that can be brought before the court.

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Rule Amendments Applicable to Circuit Court – Discovery (continued)

Rule 6.201 Discovery

(B) Discovery of Information Known to Prosecuting Attorney

- (2) adds “interrogation records” as well as police reports, concerning the case.

(C) Prohibited Discovery

- Unchanged

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Rule Amendments Applicable to Circuit Court – Discovery (continued)

Rule 6.201 Discovery

- (E) Protective Orders.
- Adds “embarrassment” as a ground (this exists in the federal rule)
- (F) Timing of Discovery.
- The current times have been expanded and made equivalent—each side has 21 days from a request to comply.
- (J) Violation.
- Emphasizes options, and that suppression is a last resort.

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Rule Amendments Applicable to Circuit Court — Plea of Guilty or Nolo Contendere

Rule 6.302 Plea of Guilty or Nolo Contendere

- (B) An Understanding Plea. Speaking directly to the defendant or defendants, the court must advise the defendant or defendants of the following and determine that ~~the~~ each defendant understands:
- (1) the name of the offense to which the defendant is pleading; the court is not obliged to explain the elements of the offense, or possible defenses;
 - (2) the maximum possible prison sentence for the offense and any mandatory minimum sentence required by law;

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Rule Amendments Applicable to Circuit Court — Plea of Guilty or Nolo Contendere (continued)

Rule 6.302 Plea of Guilty or Nolo Contendere

(B) An Understanding Plea.

- (3) if the plea is accepted, the defendant will not have a trial of any kind, and so gives up the rights the defendant would have at a trial, including the right:
 - (a) to be tried by a jury;
 - ~~(b) to be tried by the court without a jury, if the defendant chooses and the prosecutor and court consent~~

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Rule Amendments Applicable to Circuit Court - Plea of Guilty or Nolo Contendere (continued)

Rule 6.302 Plea of Guilty or Nolo Contendere

(B) An Understanding Plea.

- ~~(e)~~(b) to be presumed innocent until proved guilty;
- ~~(d)~~(c) to have the prosecutor prove beyond a reasonable doubt that the defendant is guilty;
- ~~(e)~~(d) to have the witnesses against the defendant appear at the trial;
- ~~(f)~~(e) to question the witnesses against the defendant;
- ~~(e)~~(f) to have the court order any witnesses the defendant has for the defense to appear at the trial;
- ~~(h)~~(g) to remain silent during the trial;
- ~~(i)~~(h) to not have that silence used against the defendant; and
- ~~(j)~~(i) to testify at the trial if the defendant wants to testify.

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Rule Amendments Applicable to Circuit Court - Plea of Guilty or Nolo Contendere (continued)

Rule 6.302 Plea of Guilty or Nolo Contendere

(B) An Understanding Plea. (continued)

The requirements of this section may be satisfied by a writing on a form approved by the State Court Administrator. If a court uses a writing, the court shall address the defendant and obtain from the defendant orally on the record a statement that the rights were read and understood and a waiver of those rights. The waiver may be obtained without repeating the individual rights.

- (4) if the plea is accepted, the defendant will be giving up any claim that the plea was the result of promises or threats that were not disclosed to the court at the plea proceeding, or that it was not the defendant's own choice to enter the plea;
- (5) any appeal from the conviction and sentence pursuant to the plea will be by application for leave to appeal and not by right.

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Rule Amendments Applicable to Circuit Court — Plea of Guilty but Mentally III

Rule 6.303 Plea of Guilty but Mentally III

- The only change is to conform to statute, which now places the burden of proof of insanity on the defendant. For a plea of GBMI, then, it is not necessary for the court to find that the defendant was not insane.

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Rule Amendments Applicable to Circuit Court — Plea of Not Guilty by Reason of Insanity

Rule 6.304 Plea of Not Guilty by Reason of Insanity

- Again, the change is a correction to conform subparagraph (C) (2) to the statute shifting the burden of proof of insanity to the defendant.

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Rule Amendments Applicable to District Court — Withdrawal or Vacation of Plea

Rule 6.310 Withdrawal or Vacation of Plea ~~Before Acceptance or Sentence~~

(B) Withdrawal After Acceptance but Before Sentence. ~~On After acceptance but before sentence.~~

(1) a plea may be withdrawn on the defendant's motion or with the defendant's consent, the court only in the interest of justice, may permit an accepted plea to be withdrawn before sentence is imposed unless and may not be withdrawn if withdrawal of the plea would substantially prejudice the prosecutor because of reliance on the plea. If the defendant's motion is based on an error in the plea proceeding, the court must permit the defendant to withdraw the plea if it would be required by MCR 6.311(B) subrule (C).

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Rule Amendments Applicable to District Court — Withdrawal or Vacation of Plea (continued)

Rule 6.310 Withdrawal or Vacation of Plea ~~Before Acceptance or Sentence~~

(2) the defendant is entitled to withdraw the plea if

(a) the plea involves a prosecutorial sentence recommendation or agreement for a specific sentence, and the court states that it is unable to follow the agreement or recommendation; the trial court shall then state the sentence it intends to impose, and provide the defendant the opportunity to affirm or withdraw the plea; or

(b) the plea involves a statement by the court that it will sentence to a specified term or within a specified range, and the court states that it is unable to sentence as stated; the trial court shall provide the defendant the opportunity to affirm or withdraw the plea, but shall not state the sentence it intends to impose.

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Rule Amendments Applicable to District Court - Withdrawal or Vacation of Plea (continued)

Rule 6.310 Withdrawal or Vacation of Plea ~~Before Acceptance or Sentence~~

- (C) Motion to Withdraw Plea After Sentence. The defendant may file a motion to withdraw the plea within 6 months after sentence. Thereafter, the defendant may seek relief only in accordance with the procedure set forth in subchapter 6.500. If the trial court determines that there was an error in the plea proceeding that would entitle the defendant to have the plea set aside, the court must give the advice or make the inquiries necessary to rectify the error and then give the defendant the opportunity to elect to allow the plea and sentence to stand or to withdraw the plea. If the defendant elects to allow the plea and sentence to stand, the additional advice given and inquiries made become part of the plea proceeding for the purposes of further proceedings, including appeals.

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Rule Amendments Applicable to Circuit Court — Deletion of rule 6.311

Rule 6.311 Challenging Plea After Sentence (Deleted)

- Rule deleted. Language formerly found in rule 6.311 is now located in rule 6.310.

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Rule Amendments Applicable to Circuit Court — Waiver of Jury Trial by the Defendant

Rule 6.402 Waiver of Jury Trial by the Defendant

- Modified to reflect amendments to Rule 6.113 regarding elimination of arraignments.

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Rule Amendments Applicable to Circuit Court — Selection of the Jury

Rule 6.412 Selection of the Jury

(A)-(E)[Unchanged.]

(F) ~~Instructions and Oath After Selection. After the jury is selected and before trial begins, the court must have the jurors sworn and should give them appropriate pretrial instructions.~~

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Rule Amendments Applicable to Circuit Court — Jury Trial

Rule 6.414 Conduct of Jury Trial

(A) Before trial begins, the court should give the jury appropriate pretrial instructions.

~~(A)~~(B) [Relettered but otherwise unchanged.]

~~(B)~~(C) Opening Statements. Unless the parties and the court agree otherwise, the prosecutor, before presenting evidence, must make a full and fair statement of the prosecutor's case and the facts the prosecutor intends to prove. Immediately thereafter, or immediately before presenting evidence, the defendant may make a like statement. The court may impose reasonable time limits on the opening statements.

Rule Amendments Applicable to Circuit Court — Jury Trial (continued)

Rule 6.414 Conduct of Jury Trial

~~(C)~~(D) Note Taking by Jurors. The court may permit the jurors to take notes regarding the evidence presented in court. If the court permits note taking, it must instruct the jurors that they need not take notes and that they should not permit note taking to interfere with their attentiveness. The court also must instruct the jurors ~~both~~ to keep their notes confidential except as to other jurors during deliberations ~~and to destroy their notes when the trial is concluded.~~ The court may, but need not, allow jurors to take their notes into deliberations. If the court decides not to permit the jurors to take their notes into deliberations, the court must so inform the jurors at the same time it permits the note taking. The court shall ensure that all juror notes are collected and destroyed when the trial is concluded.

(E) Juror Questions. The court may, in its discretion, permit the jurors to ask questions of witnesses. If the court permits jurors to ask questions, it must employ a procedure that ensures that inappropriate questions are not asked, and that the parties have the opportunity to object to the questions.

Rule Amendments Applicable to Circuit Court — Jury Trial (continued)

Rule 6.414 Conduct of Jury Trial

~~(D)~~(F) View. The court may order a jury view of property or of a place where a material event occurred. The parties are entitled to be present at the jury view. During the view, no persons other than, as permitted by the trial judge, the officer designated by the court in charge of the jurors, or any person appointed by the court to direct the jurors' attention to a particular place or site, and the trial judge, may speak to the jury concerning a subject connected with the trial; any such communication must be recorded in some fashion.

~~(F)~~(G) Closing Arguments. After the close of all the evidence, the parties may make closing arguments. The prosecutor is entitled to make the first closing argument. If the defendant makes an argument, the prosecutor may offer a rebuttal limited to the issues raised in the defendant's argument. The court may impose reasonable time limits on the closing arguments.

Rule Amendments Applicable to Circuit Court — Jury Trial (continued)

Rule 6.414 Conduct of Jury Trial

~~(F)~~(H) Instructions to the Jury. Before closing arguments, the court must give the parties a reasonable opportunity to submit written requests for jury instructions. Each party must serve a copy of the written requests on all other parties. The court must inform the parties of its proposed action on the requests before their closing arguments. After closing arguments are made or waived, the court must instruct the jury as required and appropriate, but with the parties' consent at the discretion of the court, and on notice to the parties, the court may instruct the jury before the parties make closing arguments, and give any appropriate further instructions after argument. After jury deliberations begin, the court may give additional instructions that are appropriate.

~~(G)~~(I) ~~(H)~~(J) [Relettered but otherwise unchanged.]

Rule Amendments Applicable to Circuit Court — Motion for Directed Verdict of Acquittal

Rule 6.419 Motion for Directed Verdict of Acquittal

(C) Bench Trial. In an action tried without a jury, after the prosecutor has rested the prosecution's case-in-chief, the defendant, without waiving the right to offer evidence if the motion is not granted, may move for acquittal on the ground that a reasonable doubt exists. The court may then determine the facts and render a verdict of acquittal, or may decline to render judgment until the close of all the evidence. If the court renders a verdict of acquittal, the court shall make findings of fact.

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Rule Amendments Applicable to Circuit Court - Verdict

Rule 6.420 Verdict

(C) Several Counts. If a defendant is charged with two or more counts, and the court determines that the jury is deadlocked so that a mistrial must be declared, the court may inquire of the jury whether it has reached a unanimous verdict on any of the counts charged, and, if so, may accept the jury's verdict on that count or counts.

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Rule Amendments Applicable to Circuit Court — Sentencing; Appointment of Appellate Counsel

Rule 6.425 Sentencing; Appointment of Appellate Counsel

- Amendments to AO 1988-4
- (B) requires the parties be provided copies of the presentence report, rather than simply an opportunity to review it, and must include proposed guidelines scoring.
- Major amendment is to meet the USSC's decision in the *Halbert* case regarding appointment of counsel after guilty and nolo pleas.

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Rule Amendments Applicable to Circuit Court - Judgment

Rule 6.427 Judgment

- Amendments technical in nature.

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Rule Amendments Applicable to Circuit Court — Reissuance of Judgment

Rule 6.428 Reissuance of Judgment

If the defendant did not appeal within the time allowed by MCR 7.204(A)(2) and demonstrates that the attorney or attorneys retained or appointed to represent the defendant on direct appeal from the judgment either disregarded the defendant's instruction to perfect a timely appeal of right, or otherwise failed to provide effective assistance, and, but for counsel's deficient performance, the defendant would have perfected a timely appeal of right, the trial court shall issue an order restarting the time in which to file an appeal of right.

Rule Amendments Applicable to Circuit Court — Correction & Appeal of Sentence

Rule 6.429 Correction and Appeal of Sentence

- (A) Authority to Modify Sentence. A motion to correct an invalid sentence may be filed by either party. The court may correct an invalid sentence, but the court may not modify a valid sentence after it has been imposed except as provided by law.
- (B) Time for Filing Motion.
 - (1) A motion for resentencing to correct an invalid sentence may be filed within 42 days after entry of the judgment before the filing of a timely claim of appeal.
 - (2) If a claim of appeal has been filed, a motion for resentencing to correct an invalid sentence may only be filed in accordance with the procedure set forth in MCR 7.208(B) or the remand procedure set forth in MCR 7.211(C)(1).
 - (3) If the defendant may only appeal by leave or fails to file a timely claim of appeal, the defendant may file a motion for resentencing to correct an invalid sentence may be filed within the time for filing an application for leave to appeal 6 months of entry of the judgment of conviction and sentence.
 - (4) If the defendant is no longer entitled to appeal by right or by leave, the defendant may seek relief pursuant to the procedure set forth in subchapter 6.500.

Rule Amendments Applicable to Circuit Court – New Trial

Rule 6.431 New Trial

- (1) is changed to require a motion for new trial to be filed before the timely filing of a claim of appeal rather than 42 days of the judgment, to take account of time to appoint counsel.
- (3) reduces the time for an untimely motion to 6 months after judgment, rather than 1 year.

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Rule Amendments Applicable to Circuit Court

- Session Wrap Up and Evaluation

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